

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

JAMES E. GIRARDS, *et al.*,

*Plaintiffs,*

vs.

KLEIN FRANK, P.C.,

*Defendants.*

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CIVIL ACTION NO. 3:13-CV-02695-B

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**AGREED MOTION FOR LEAVE TO TAKE DEPOSITION OF  
CLAY MILLER IN LIEU OF TRIAL TESTIMONY**

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COME NOW Plaintiffs James E. Girards and James E. Girards P.C. d/b/a Girards Law Firm, and Defendant Klein Frank, P.C., and file this their *Agreed Motion For Leave to Take Deposition of Clay Miller in Lieu of Trial Testimony* and would show unto the Court the following:

1.01 Plaintiffs recently learned that their designated expert and fact witness Clay Miller will be out of the state on the June 15-16, 2015, the two days that this case is currently set for trial. Unfortunately, Mr. Miller cannot adjust his schedule, as he is required to be out of the state for another trial setting. A true and correct copy of Clay Miller's trial schedule is attached hereto as Exhibit A. **As Mr. Miller is unable to attend the current trial setting, the parties have agreed to take his deposition on June 11, 2015** in lieu of trial testimony and request that the Court grant leave to do so outside of the discovery period.

1.02 Mr. Miller has been designated by Plaintiffs as an expert and fact witness who may be called to testify live at trial. Specifically, in *Plaintiffs James E. Girards and James E. Girards, PC's Second Supplemental Witness List*, Plaintiffs identified Clay Miller as a probable

fact and expert witness and specified that he will testify “regarding the customary role of attorneys hired as local counsel in Texas and the typical fee for such service, the contract at issue, Plaintiffs’ role and participation in the underlying case, the legal issues and handling of the underlying case, his dealings with Defendant and his termination by Defendant.”

1.03 Plaintiffs believe that Mr. Miller’s testimony is not only relevant, but material to their case and this Court’s thorough analysis of the issues before it. Plaintiffs further assert that Mr. Miller has a unique point of view to present to the Court as, not only is he an expert in the role of local counsel in Texas, and the duties and fees typically attached to those services, but he has particularized knowledge of Defendant Klein’s behavior in the underlying *Dawson* litigation. Because Clay Miller served as local counsel in the underlying *Dawson* litigation prior to Plaintiffs’ involvement, Plaintiffs would show that Mr. Miller has unique testimony that the Court will not hear from other witnesses. Thus, Clay Miller’s (1) expertise in the area of Texas local counsel duties, responsibilities, and fees, and (2) particularized and unique factual knowledge of Defendant Klein’s prior dealings with local counsel in the *Dawson* litigation, make Mr. Miller an indispensable witness, both to the Plaintiffs’ case and to this Court’s complete review of the issues.

1.04 Good cause exists to allow this deposition as agreed to by the parties, because Mr. Miller is an integral witness to Plaintiffs’ case-in-chief, but cannot attend the current trial setting. Federal Rule of Civil Procedure 15(a)(2) provides that the “court should freely give leave when justice so requires.” Justice so requires here, as Clay Miller’s testimony is material to Plaintiffs’ case. Accordingly, the parties respectfully request the Court grant leave for them to conduct the deposition of Clay Miller in lieu of trial testimony.

1.05 The parties further request that the Court grant leave to allow late designation of the excerpts from Mr. Miller's deposition testimony that the parties propose to offer at trial, for the reasons state herein.

WHEREFORE, PREMISES CONSIDERED, the parties respectfully request that the Court grant the relief sought herein.

Respectfully submitted,

/s/ James L. Mitchell

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has this date been sent to all attorneys of record in the above-styled and numbered matter, said service being effected in the following manner:

Certified Mail/Return Receipt Requested

Telecopy

Regular Mail

Electronic Filing

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DATED: June 1, 2015

/s/ James L. Mitchell

**JAMES L. MITCHELL**